

Notice of Allowability**Application No.**

10/538,286

Applicant(s)

BRUNNER ET AL.

Examiner

DOUGLAS M. WILLIS

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 01 October 2010.
2. ☒ The allowed claim(s) is/are 1,3-8,10,11,13,14 and 30.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 08-13-07
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 10-15-10.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/DOUGLAS M WILLIS/
Examiner, Art Unit 1624

/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624

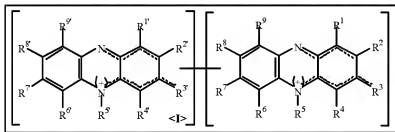
DETAILED ACTION

Status of the Claims / Priority

Claims 1, 3-8, 10, 11 and 13-31 are pending in the current application. According to the *Amendments to the Claims*, filed October 1, 2010, claims 1, 6-8, 11 and 14 were amended and claims 2, 9 and 12 were cancelled. This application is a 35 U.S.C. § 371 National Stage Filing of International Application No. PCT/EP2003/013994, filed December 9, 2003, which claims priority under 35 U.S.C. § 119(a-d) to DE 102618526, filed December 20, 2002.

Status of Restrictions / Election of Species

Applicant's affirmation of the following election, with traverse, in the reply filed on



September 24, 2009, is acknowledged: a) Group I - claims 1, 3-8, 10, 11, 13, 14 and 30; and b) substituted

phenazinium salt of formula <I> - p. 23, example vii.

The requirement was made FINAL in the *Non-Final Rejection*, mailed on April 10, 2009.

Claims 15-29 and 31 were withdrawn from further consideration, pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

The sections of U.S.C. Title 35 that formed the basis of prior rejections formulated, as well as any references supporting said rejections, that are not included with this Office action, may be found in either the *Non-Final Rejection*, mailed on April 10, 2009, the *Final Rejection*,

mailed on October 27, 2009 or the *Non-Final Rejection*, mailed on August 26, 2010. Furthermore, any rejections and/or objections of record not explicitly addressed herein below, are hereby withdrawn, in light of applicant's arguments and/or the *Amendments to the Claims*, filed October 1, 2010.

Thus, a fourth Office action and prosecution on the merits of claims 1, 3-8, 10, 11, 13, 14 and 30 is contained within.

Reasons for Allowance

Claims 1, 3-8, 10, 11, 13, 14 and 30 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art is silent with respect to mixtures of substituted oligomeric phenazinium salts of the formula <I> and formula <II>, as recited in claim 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled *Comments on Statement of Reasons for Allowance*.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The following is a statement of examiner's amendment to the record: a) claim 11 is

amended to insert *and* between the last two species; and b) claims 15-29 and 31 are hereby cancelled.

In claim 11, the text of the first line on page 6:

3-chloro-7-N-ethylamino-5-phenyl-phenazinium,

has been deleted and replaced with the following:

---"3-chloro-7-N-ethylamino-5-phenyl-phenazinium, and"---

Claims 15-29 and 31 have been cancelled.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Frank J. Bonini (Reg. No. 35,452) on October 15, 2010.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS M. WILLIS, whose telephone number is 571-270-5757. The examiner can normally be reached on Monday thru Thursday from 8:00-6:00 EST. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson, can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DOUGLAS M WILLIS/
Examiner, Art Unit 1624

/James O. Wilson/
Supervisory patent Examiner, AU 1624